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REMARKS

Claims 1–21 are pending in the present application. In the Office Action mailed January 26, 2005, the Examiner reopened prosecution responsive to Applicant's Appeal Brief. The Examiner then rejected claims 1-8 under 35 U.S.C. §101. The Examiner next rejected claims 1, 4-6, and 8 under 35 U.S.C. §103(a) as being unpatentable over Martin (USP 5,809,479) in view of Dietrich (USP 6,032,121). Claims 2, 3, 7, and 9-21 were rejected under 35 U.S.C. §103(a) as being unpatentable over Martin in view of Dietrich, and further in view of Schoenberg (USP 6,322,502).

The Examiner has for the first time rejected claims 1-8 under 35 U.S.C. §101 asserting that "the claimed invention is directed to non-statutory subject matter." Applicant finds such an assertion disingenuous as the rejection appears for the first time in an Office Action that reopens prosecution after Applicant's filing of an Appeal Brief of October 4, 2004. More particularly, the Examiner mailed three Office Actions before making this §101 rejection.

The Examiner asserts that "claim 1 fails to include a positive limitation in the body of the claim that places the invention clearly within the technological arts." The Examiner further states that "as currently presented, claim 1 includes method steps that can be performed manually without the use of technology." Applicant respectfully disagrees.

There is no requirement in 35 U.S.C. §101 that an invention use technology as asserted by the Examiner. Title 35 U.S.C. §101 clearly states that "[w]hoever invents or discovers <u>any new and useful process,</u> machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefore...." Claim 1 defines the present invention as a method for reporting status of work in progress, comprising the steps of periodically querying a database that contains data indicating an order number, a promise date, a request date, a shipment date, and a product category for a plurality of products/services offered, comparing the promise dates and the request dates, setting a proactive promise alert if a promise date is later than a request date for a given order, and displaying the proactive promise alerts with the order numbers for those given orders that have a promise date that is later than their respective request date. That is, claim 1 clearly sets forth a <u>process</u> by which the status of work in progress is reported.

As stated in MPEP §706.03(a), "The subject matter of the invention ... must come within the boundaries set forth by 35 U.S.C. 101, which permits patents to be granted only for 'any new and useful process, ..., or any new and useful improvement thereof.'" MPEP §706.03(a) further states that "[t]he term 'process' ... means process, art or <u>method,</u> and includes a new use of a known process." As claim 1 is clearly drawn to a process, Applicant believes the 35 U.S.C. §101 rejection cannot be sustained.

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The Examiner next rejected claims 1, 4-6, and 8 under 35 U.S.C. §103(a) as being unpatentable over Martin et al. in view of Dietrich et al. stating that "Martin discloses a method of reporting status of work in progress ... [and] ... fails to disclose setting a proactive promise alert if a promise date is later than a request date for a given order and displaying the proactive alerts with the order number." The Examiner further states that "Dietrich teaches the use of a method of 'proactive' planning (as required by claim 1) in real-time (as required by claim 5) to provide advance warnings (see column 2, lines 58-61; see also column 6, lines 25 - column 7, line 14)." Applicant respectfully disagrees.

With respect to Martin et al., the Examiner states that "[i]f there is a discrepancy between a promise date and request date, Martin merely recognizes the discrepancy and reschedules (see column 3, line 56 – column 4, line 23)." This rescheduling subjects the customer to accept a delivery date that is later than a requested delivery date. "The customer-expected delivery date is communicated to the customer, which then uses this date for purposes of on-time measurements." Martin et al., col. 4, lns. 41-44. That is, there is no alert but simply a rescheduling and a customer is expected to tolerate delivery irregularities and use such irregularities to gauge supplier performance. There is no need or motivation to generate or display any alert in the system of Martin et al. A scheduler, when he schedules a delivery after a customer expected date, already knows that a delivery will be late. Martin et al., col. 3, lns. 61-66. In short, there is no motivation to provide an alert for that which is already known.

With respect to Dietrich et al., the Examiner states that "Dietrich teaches the use of a method of 'proactive' planning (as required by claim 1) in real-time (as required by claim 5) to provide advance warnings (see column 2, lines 58-61; see also column 6, lines 25 - column 7, line 14)." Applicant does not disagree that Dietrich et al. teaches a method of proactive planning, however, that is not what is called for in claim 1. Claim 1 calls for, in part, setting a proactive alert if a promise date is later than a request date for a given order and displaying the proactive promise alerts with the order numbers for those given orders that have a promise date that is later than their respective request date. Dietrich et al. discloses a method of proactive planning. That is, the system of Dietrich et al. calls for generating a new plan if an event is not satisfiable by the current plan. Dietrich et al. states that "a proactive planning methodology can use information about changes in the input data used for planning to determine when a next plan should be produced." Dietrich, et al., col. 2, ln. 66 to col. 3, ln. 2. Dietrich et al. further states that "while the first method would typically be used to determine if a new plan should be generated immediately, this second method is used to determine the most appropriate time to begin the next planning process, that is, to schedule the next planning event." Dietrich et al., col. 8, lns. 40-44.

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That is, if there is a potential failure of the present plan, Dietrich et al. teaches scheduling a planning event either immediately or sometime in the near future. This is not what is claimed in claim 1.

The Examiner further states that "[i]t is noted that Martin fails to clearly disclose data related to product category of products or services" and that "[t]he Examiner takes Official Notice that it is old and well known to identify product categories for product orders." If such were truly "well known" it is not unreasonable for the Examiner produce a prior art reference which teaches such. As stated in MPEP §2144.03, "[w]hile 'Official Notice' may be relied on, these circumstances should be rare ..." and "[o]rdinarily, there must be some form of evidence in the record to support an assertion of common knowledge." MPEP §2144.03 further states that "general conclusions concerning what is "basic knowledge" or "common sense" to one of ordinary skill in the art without specific factual findings and some concrete evidence in the record to support these findings will not support an obviousness rejection."

Accordingly, Applicant objects to the Examiner's taking of Official Notice and requests that the Examiner provide support that it is old and well known to identify product categories for product orders. Moreover, Martin et al. fails to teach or suggest querying an order number, a promise date, a request date, a shipment date, or a product category and setting a proactive alert if a promise date is later that a request date for a given order because the entirety of the system of Martin et al. is manually manipulated. That is, there is no need to query a database or compare respective data contained therein when the human order scheduler is immediately aware of delivery failure by entry of a delivery later than a customer requested date. See Martin et al., col. 3, ln. 59 to col. 4, ln. 1. Additionally, combining the system of Martin et al. with the proactive planning system of Dietrich et al. would require the scheduler to clear an error indicator that the schedule already knows exists. That is, the scheduler of Martin et al. knows that a delivery will be late and does not need to be alerted that such will occur.

Claim 1 calls for, in part, displaying a proactive promise alert with an order number if a promise date is later than a request date. That is, the present invention is directed to a system that allows for expedited identification and addressing of particular order events that do not satisfy delivery schedules and does not require scheduling of a planning event as taught by Dietrich. To further clarify this distinction Applicant has amended claim 1 to further define that displaying of the proactive promise alerts with the order numbers are "for those given orders that have a promise date that is later than their respective request dates". That is, the proactive alerts are displayed for those orders that have a promise date that is later than their respective request date. Such a process is not taught, suggested, or disclosed in the art of record. Accordingly, Applicant

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believes claim 1, and those claims that depend therefrom, are patentably distinct over the art of record.

The Examiner next rejected claims 9 and 15 under 35 U.S.C. §103(a) as being unpatentable over Martin et al. in view of Dietrich et al. as applied to claim 1 and further in view of Schoenberg et al. stating that "Martin and Dietrich disclose all the limitations as set forth above but fail to explicitly disclose setting a reactive alert if a shipment date exists and the request date is less than a user-defined number of days prior to a current date." The Examiner further states that "[i]t would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Martin/Dietrich with reactive alerts as taught by Schoenberg, because the use of reactive alerts are helpful management tools for correcting problems when undesired activities have already occurred." The art of record provides no such motivation.

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. MPEP §2143.

Claims 9 calls for, in part, setting a proactive alert is a promise date is later than a request date, setting a reactive alert if the shipment date exists and the request date is less than a user-defined number of days prior to a current date and displaying any promise and shipment alerts by product category and type of alert. Claim 15 calls for, in part, setting a proactive alert if any promise date is later than a request date, setting a reactive alert if a shipment date exists for an order and the request date is less than a user-defined number of days prior to a current date, and displaying all proactive and reactive alerts by product/service category and type of alert. The art of record neither teaches nor suggests that called for in claims 9 and 15.

Specifically, the system of Dietrich et al. schedules a planning event, or requests the generation of a new schedule when it is determined that a new plan is required, as such, Dietrich et al. does not teach, suggest, or disclose displaying a promise alert and/or displaying a reactive alert by product/service category and type of alert. That is, Dietrich et al. discloses generating a new plan schedule if the present schedule is cannot be satisfied. There would be no motivation to generate or display any reactive alert. That is, if a new plan is generated every time a potential order would miss a target date, there would be no motivation to generate or display a reactive alert indicating that an order has been missed. Before an order is missed, the system of Dietrich et al. would require the generation of a new plan. In short, the system of Dietrich et al. is

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designed to prevent missing an order. As such, there is no motivation to provide any reactive alert as called for in claims 9 and 15 is the system of Dietrich et al.

Additionally, there is also a lack of motivation to combine the teachings of Martin et al., Schoenberg et al., with the system of Dietrich et al. as suggested by the Examiner. Specifically, Schoenberg et al. discloses a medical information system that receives patient data and information from various sources and displays such information in a variety of formats for use by members of a medical team. See Schoenberg et al., Abstract. Schoenberg et al. discloses generating operational reminders for each action item that is transmitted between different members of a patient's medical treatment team. See Schoenberg et al. col. 5, lns. 40-42. Schoenberg et al. further discloses that the system permits the entry of confirmatory information by respective members of a patient's medical treatment team and further, that if a treatment, i.e. medication, is not delivered as prescribed by the patient's doctor, an alarm is indicated to notify the medical team that an order, i.e. medicating of a patient, has not yet been carried out. See Schoenberg et al., col. 5, lns. 43-48.

The system of Schoenberg et al. provides for intercommunication between a plurality of individual health care personnel who may be associated with a specific patient. See Schoenberg et al., col. 6, lns. 13-37. As a patient's primary physician determines a medication regiment for the patient, the patient's prescribed medication regiment is input into the system and communicated to the pharmacist who distributes the medications, and the resident assistants or nurses who administer the proscribed medications to the patient. Id.

Unrelated to Schoenberg et al., Martin et al. discloses a system of tracking and reporting on-time delivery performance of goods. Martin et al. discloses a system that determines a delivery window for individual customers. See Martin et al., Abstract. The delivery window determines when the customer considers goods to be delivered on time. Id. For each subsequent order, the customer provides a customer-requested delivery date. Id. A customer-preferred ship date is then determined by comparing the customer-requested delivery date and the delivery window characteristics. Id. The system then shows to an order scheduler – a person -- the customer-preferred ship date and obtains a targeted ship date for the order from the order scheduler. Id. The order scheduler then dictates what the actual ship date will be and in so doing, knows whether a specific order will be delivered after a customer-requested ship date. Id. The system maintains delivery statistics for each customer and determines on-time delivery statistics for each customer. Id. That is, if an order is going to be shipped to a customer after a customer-requested ship date, the human order scheduler is abundantly aware of a late shipment date as it is that very order scheduler that dictates which orders will be delivered late. Since the system of

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Martin et al. is directed to tracking and reporting on-time delivery statistics, Martin et al. acknowledges that some deliveries will be delivered after a customer-requested ship date and will therefore be delivered late.

Since Martin et al. is interested in after-completion report generating, there would be no motivation to combine the system of Martin et al. with any alerting function that may be disclosed in Schoenberg et al. or Dietrich et al. That is, because the scheduler referred to in Martin et al. already knows that an order will be delivered after a customer-requested delivery date, it would be fruitless to alert the very scheduler that the date that they just knowingly entered is after the customer-requested delivery date. Such would be contrary to the teaching of the reference. As supported above, the art of record does not teach, disclose, or suggest a motivation for reporting status of work in progress, including setting a proactive promise alert if a promise date is later than a request date for a given order and displaying the proactive promise alerts with the order numbers.

Further, the general nature of the system of Martin et al. is not directed to any alert function, either reactive or proactive – as such is not even disclosed in Martin et al. Martin et al. teaches a system whereby a human scheduler, based on manufacturing capacity or other parameters, changes a delivery date to a date beyond the customer request date. See Martin et al., col. 3, ln. 59 to col. 4, ln. 1. This is accomplished by a manual review of all the orders. Martin et al., col. 3, lns. 59-61. As the delivery date of Martin et al. is controlled by the human scheduler's input upon the manual review of all the orders, there is no motivation in either reference or combination thereof to include any alert based upon shipment date and request date comparisons. It is clear that Martin et al. requires a human scheduler to review orders and dictate the date of delivery thereby making the customer subject to deviations from a requested delivery date. Id. As such, within the context of Martin et al., there is no motivation to provide any alert -- reactive or proactive. Martin et al. teaches that the scheduler reviews all the orders and manipulates the delivery date -- therefore he already knows that a specific delivery will be late. Martin et al., col. 3, lns. 61-66. As such, there is no motivation to provide an alert for that which is already known. Therefore, as shown above, the art of record does not include the motivation to combine the references in the manner done so by the Examiner. Further, assuming that the requisite motivation to combine is present, as set forth above, the references, taken singly or in combination, fail to teach and or suggest each and every element called for in the claims.
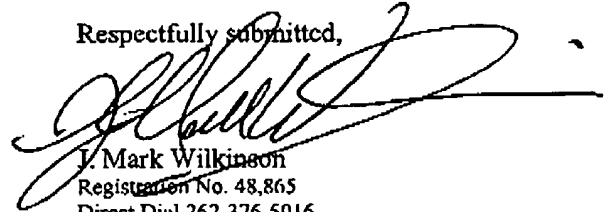
Therefore, in light of at least the foregoing, Applicant respectfully believes that the present application is in condition for allowance. As a result, Applicant respectfully requests timely issuance of a Notice of Allowance for claims 1-21.

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     Applicant appreciates the Examiner's consideration of these Amendments and Remarks and cordially invites the Examiner to call the undersigned, should the Examiner consider any matters unresolved.

Respectfully submitted,

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